

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NORTHWESTERN INSTITUTE
OF PSYCHIATRY, INC.

v.

THE TRAVELERS INDEMNITY COMPANY

MISC. NO. 01-MC-151

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:

NORTHWESTERN INSTITUTE
OF PSYCHIATRY, INC.

Debtor.

NO. 00-33364

CHAPTER 11

NORTHWESTERN INSTITUTE
OF PSYCHIATRY, INC.

Plaintiff,

v.

THE TRAVELERS INDEMNITY COMPANY

Defendant.

ADV. NO. 01-656

MEMORANDUM

ROBERT F. KELLY, J.

SEPTEMBER 20, 2001

Presently before this Court is the Motion of Defendant, The Travelers Indemnity Company ("Travelers") for Withdrawal of Reference from the United States Bankruptcy Court to this Court pursuant to 28 U.S.C. §157(d). For the following reasons, Travelers Motion is denied.

I. BACKGROUND

The Plaintiff/Debtor, Northwestern Institute of Psychiatry, Inc. (“Northwestern”), operates a full service, 146-bed psychiatric hospital (“the Facility”) in Fort Washington, Pennsylvania. On October 27, 2000 (“Petition Date”), Northwestern filed a Voluntary Petition for Reorganization under Chapter 11 of the United States Bankruptcy Code in the Eastern District of Pennsylvania. Since the Petition Date, Northwestern has continued in possession of its assets as a Debtor-in Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code, and, since November 2, 2000, Northwestern has been jointly administered pursuant to Bankruptcy Rule 1015(b).

On or about April 1, 2001, Northwestern obtained an insurance policy (“the Policy”) from Travelers. On June 16, 2001, Northwestern alleges that the Facility sustained flood damage. Travelers refused coverage based on its conclusion that the property was located in a flood zone for which coverage was excluded under the policy. Therefore, on July 26, 2001, Northwestern filed an adversary Complaint against Travelers seeking a declaration of its and Travelers’ rights to insurance coverage under the Policy. In addition, due to the critical nature of Northwestern’s financial situation, Northwestern seeks an expedited trial for a declaration of whether or not the Policy covers the flood damage (“the Coverage Issue”).

On August 10, 2001, Travelers filed a Motion Seeking Withdrawal of the District Court’s Reference from the Bankruptcy Court. Travelers contends that this Court should withdraw its referral since the adversary matter is a non-core matter.¹ Northwestern retorts that

¹ Travelers also raises the point that it may request a jury trial and, if in fact Travelers does request a jury trial, it does not consent to a jury trial before the Bankruptcy Court. However, at the time of deciding this Motion, Travelers has not filed an answer to the Adversary

the adversary action is a core matter which should properly remain with the Bankruptcy Court.

II. DISCUSSION

A. Standard for Withdrawal of Reference

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a), which provides: “Each district court may provide that any or all cases arising under Title 11 and any or all proceedings arising in or related to a case under Title 11 shall be referred to the bankruptcy judges for the district.” Id. However, this Court may withdraw its reference to the bankruptcy court in accordance with the provisions set forth in Section 157 of the Bankruptcy Code:

The district court may withdraw, in whole or in part, any case referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. §157(d). Since Northwestern’s claims do not require consideration of any federal law or any issues which would mandate withdrawal, Travelers seeks permissive withdrawal of reference under the first sentence of Section 157(d).

Although there is no statutory definition of what constitutes “cause shown” under 28 U.S.C. §157(d) for permissive withdrawal of reference, “the statute requires in clear terms that cause be shown before the reference can be withdrawn.” In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990). In determining whether cause is shown, courts generally begin by considering the threshold question of whether the matters to be withdrawn are “core” or “non-core” to the

Complaint, therefore the issue of whether or not Travelers is entitled to a jury trial as it relates to Travelers request for a withdrawal is not addressed as it is not ripe for decision. Accordingly, this Memorandum solely addresses the Coverage Issue.

bankruptcy case. In re Pelullo, No. 95-22430, 1997 WL 535155 (E.D. Pa. Aug.15,1997)(citing Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1101 (2d Cir. 1993)); In re Philadelphia Training Center Corp., 155 B.R. 109, 112 (E.D. Pa. 1993).

In addition, the Third Circuit has set forth several factors which the District Court should consider when deciding whether to withdraw the reference in order to promote judicial economy:

(1) promoting uniformity in bankruptcy administration; (2) reducing forum shopping and confusion; (3) fostering the economical use of the debtors' and creditors' resources; and (4) expediting the bankruptcy process. In re Pruitt, 910 F.2d at 1165(adopting Holland Am. Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)).

B. The Adversary Action is a Core Proceeding.

Third Circuit precedent holds that “a proceeding is core under Section 157 if it invokes a substantive right provided by Title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.” In re the Guild and Gallery Plus, Inc., 72 F.3d 1171, 1178 (3d Cir. 1996)(citing In re Marcus Hook Dev. Park Inc., 943 F.2d 261, 267 (3d Cir. 1991)); see also 28 U.S.C. §157(b)(2). In core proceedings, a bankruptcy court may enter appropriate orders and judgments, whereas in those that are non-core, a bankruptcy court is limited to submitting proposed findings of fact and conclusions of law to the district court which must then review those findings and conclusions *de novo*. 28 U.S.C. §157(b) and (c).

The adversary proceeding against Travelers seeks a declaratory judgment that the Policy issued to Northwestern covers the flood damage sustained to the Facility. The Policy was issued to Northwestern in April 2001. Thus, the adversary proceeding concerns causes of action which arose post-petition under an insurance contract formulated post-petition. Therefore, the

adversary action involves a post-petition contract with a debtor-in-possession, and such an action is categorized as core under 28 U.S.C. §§ 157(b)(2)(A), “matters concerning the administration of the estate,” and section (b)(2)(O) “other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor relationship.” See e.g., In re Arnold Print Works, Inc., 815 F.2d 165, 168-71 (1st. Cir. 1987)(holding that debtor-in-possession's legal action to collect account receivable under post-petition contract was “core proceeding” over which bankruptcy court had constitutional jurisdiction); In re Nutri/System, Inc., 159 B.R. 725, 726 (E.D. Pa. 1993); Valley Forge Plaza Assoc. v. Firemen's Fund Ins. Cos., 107 B.R. 514, 516-18 (E.D. Pa. 1989); In re Sacred Heart Hosp. of Norristown, 181 B.R. 195, 202 (Bankr. E.D. Pa. 1995); and In re 222 Liberty Assoc., 110 B.R. 196, 199-200 (Bankr. E.D. Pa. 1990). Further, actions based upon post-petition causes of actions are “matters concerning the administration of the estate” within § 157(b)(2)(A) and, therefore, can be heard and determined by a bankruptcy judge. See e.g., In re Kent, No. 95-14602DAS, 1997 WL 20507 (Bankr. E.D. Pa. Jan.15,1997); Valley Forge Plaza Assoc., 107 B.R. at 516-18.

C. Refusing Withdrawal is in the Interest of Judicial Economy.

Notwithstanding that this proceeding is properly characterized as core, under §157(d) the reference may be withdrawn for cause shown. As previously noted, “fostering the economical use of the debtors’ and creditors’ resources, and expediting the bankruptcy process” are factors which the court should evaluate when determining whether to withdraw the reference of an adversarial proceeding. In re Pruitt, 910 F.2d at 1168. Travelers asserts that the withdrawal of the adversary action will promote judicial efficiency and an economic use of the debtor’s and creditors’ resources since the bankruptcy court is precluded from entering final

judgment in non-core proceedings without the consent of the parties. Travelers proposition is flawed, however, since the Coverage Issue is a core matter which can be determined by the bankruptcy court. Travelers does not offer any other reasons to support its conclusion that judicial economy will be served by withdrawing the referral. Rather, this Court finds that withdrawing the referral at this stage would be antithetical to the tenants of judicial economy. As a result of the flood, Northwestern has been unable to repair thirty-two (32) of its beds, and it owes substantial funds to contractors who performed temporary remediation work to the other damaged areas of the Facility. Northwestern alleges that the inability to repair its beds, which constitutes approximately 22% of its patient capacity at the Facility, is causing Northwestern additional harm in the form of lost monthly cash flow, referral refusals, employee lay-offs and inability to refinance its hospital facility. Since Northwestern is in the midst of a Chapter 11 proceeding, the resolution of the adversary matter could have a substantial effect on its ability to reorganize. The bankruptcy court is familiar with the parties, the factual background of the case and the legal issues involved. Therefore, this court finds no reason to disturb the present course and it declines to withdraw the reference as judicial economy will be served by allowing the adversary action to remain in bankruptcy court.

III. CONCLUSION

For the reasons set forth above, the court will deny Travelers' Motion to Withdraw.

An appropriate Order follows.

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ORDER

AND NOW, this day of September, 2001, upon consideration of the Motion of Defendant, The Travelers Indemnity Company for Withdrawal of Reference from the United States Bankruptcy Court to this Court (Dkt. No. 1) and Plaintiff's Response thereto

(Dkt. No. 2), it is hereby ORDERED that said Motion is DENIED.

BY THE COURT:

ROBERT F. KELLY, J.